

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kim Mosolf	Team: Team # 5	CCRB Case #: 200201666	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/06/2002 8:00 PM	Location of Incident: § 87(2)(b)	Precinct: 113	18 Mo. SOL 9/6/2003	EO SOL 9/6/2003	
Date/Time CV Reported Thu, 03/07/2002 9:30 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/13/2002 12:05 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Donald Abrams	10343	921890	113 PCT
2. An officer			
3. POM Joseph McCormack	27434	919383	ESS 04
4. POM Donovan Race	22955	893544	ESS 09
5. DT3 Andrew Fesler	02189	882468	E S U
6. An officer			
7. Officers			
8. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Macaluso	26489	904413	113 PCT
2. SSA George Norris	02464	894235	113 PCT
3. SSA Thomas Urban	02799	874830	E S U
4. POM Edward Bauer	10479	917288	ESS 06
5. POM Dale Schultz	27715	899827	E S U

Officer(s)	Allegation	Investigator Recommendation
A.POM Donald Abrams	Abuse: PO Donald Abrams entered and searched § 87(2)(b) in Queens.	
B.POM Donald Abrams	Abuse: PO Donald Abrams refused to provide his name and shield number to § 87(2)(b) and § 87(2)(b)	
C.DT3 Andrew Fesler	Force: Det. Andrew Fesler struck § 87(2)(b) with a police shield.	
D.DT3 Andrew Fesler	Force: Det. Andrew Fesler struck § 87(2)(b) with a police shield.	

Officer(s)	Allegation	Investigator Recommendation
E.DT3 Andrew Fesler	Force: Det. Andrew Fesler struck § 87(2)(b) with a police shield.	
F.POM Donovan Race	Force: PO Donovan Race struck § 87(2)(b) with a radio.	
G.POM Donovan Race	Abuse: PO Donovan Race threatened § 87(2)(b) and § 87(2)(b) with the use of force.	
H.POM Joseph McCormack	Force: PO Joseph McCormack used physical force against § 87(2)(b)	
I. Officers	Force: Officer pointed their guns at the residents of § 87(2)(b) in Queens.	
J. An officer	Discourtesy: An officer spoke obscenely and rudely to § 87(2)(b)	
K. An officer	Abuse: An officer strip-searched § 87(2)(b)	
L. An officer	Discourtesy: An officer spoke obscenely and rudely to § 87(2)(b)	
M. An officer	Abuse: An officer arrested § 87(2)(b)	
N. An officer	Discourtesy: An officer spoke obscenely and/or rudely to the residents of § 87(2)(b)	
O. An officer	Abuse: An officer threatened § 87(2)(b) with the use of force.	

Synopsis

On March 6, 2002 at approximately 8PM, ESU officers executed a no-knock search warrant at § 87(2)(b) in Queens, the home of § 87(2)(b) and § 87(2)(b). ESU officers allegedly threatened the use of force, used their police shields to employ excessive force, and pointed their guns at the residents.

Officers from the 113th Precinct, including PO Donald Abrams, then searched the home and recovered a gun and marijuana. PO Abrams allegedly failed to provide his name and shield number.

An unidentified uniformed officer allegedly used the word “fuck” in the presence of § 87(2)(b) when attempting to locate UPN on the television.

Another victim, § 87(2)(b) later made further allegations that an unidentified officer spoke discourteously to her and to the occupants of § 87(2)(b). § 87(2)(b) threatened § 87(2)(b) with the use of force, and arrested her only because she was asking too many questions.

§ 87(2)(g)

Summary of Complaint

This complaint was generated by a call to IAB on March 7, 2002 by an NYPD officer assigned to Queens Court Section reporting that three prisoners, § 87(2)(b) and § 87(2)(b) were complaining of the treatment that they had received during the execution of a search warrant in their home (Enc. 6a-b). IAB investigators traveled to § 87(2)(b) where they interviewed all three prisoners. § 87(2)(b) was listed on the IAB report as the complainant and also handled the majority of contact during the CCRB investigation.

Complainant/Victim § 87(2)(b)

§ 87(2)(b) was interviewed by IAB, Group 54, on March 7, 2002 at § 87(2)(b) (Enc. 12a-b). Her medical records note that she complained of jaw pain from being struck in the jaw, although they do not mention how this occurred (Enc. 11). Her IAB statement was generally consistent with her later CCRB interview. She noted that her fiancé had been hit by a police shield on his face. When she protested, she was hit twice on the left side of her face, an allegation she consistently made later. § 87(2)(b) did not make any allegations regarding asking for a name and shield number, being rudely spoken to, or being further hurt by any officer, which she later alleged at her CCRB interview.

On March 26, 2002, Inv. Bakalar spoke to § 87(2)(b) over the phone, regarding the search warrant executed at her home at § 87(2)(b) in Queens on March 6, 2002 (Enc. 13). Her statement and allegations were basically consistent with her first interview with IAB and her later interview at the CCRB, but she did change her allegation of the words spoken by several of the subject officers. She also alleged during this phone conversation that both Det. Fesler and PO Race were hitting her with their radios and flashlights, but during her CCRB interview, only attributed this allegation to PO Race. She never made this allegation during her IAB interview. § 87(2)(b) also stated briefly in this phone conversation that § 87(2)(b) § 87(2)(b)'s friend, § 87(2)(b) who had arrived at the scene after the initial entry, was handcuffed and forced to take his pants down. She did not specify if she had witnessed this or which officer had been involved. She did not make this allegation during her IAB interview or at her later CCRB interview.

On April 8, 2002, § 87(2)(b) was interviewed at the CCRB by Inv. Bakalar (Enc. 14a-d). She stated that on March 6, 2002, she was at her home at § 87(2)(b) in Queens, where she rents an upstairs apartment from a landlady named § 87(2)(b) who lives downstairs. At approximately 7:45 p.m. on the aforementioned date, she, her fiancé § 87(2)(b) and her § 87(2)(b)-old daughter § 87(2)(b) were upstairs watching television in the front bedroom. § 87(2)(b) heard “a ruckus” coming up the stairs, and

as she opened the bedroom door, two officers in “riot gear,” later identified as Det. Fesler and PO Race entered with guns drawn and flashlights “flashing.” The officers pushed § 87(2)(b) and § 87(2)(b) into the doorway, and were screaming, “Get down, put your fucking hands behind your back.” § 87(2)(b) and § 87(2)(b) turned to get to the beds and § 87(2)(b) went to put a cigarette out. One of the officers said to § 87(2)(b) “You’re a fucking wiseguy, huh, you’re fucking smoking?”

§ 87(2)(b) told § 87(2)(b) to go to the side of the room. § 87(2)(b) and § 87(2)(b) were lying on their beds with their hands behind their backs as instructed. § 87(2)(b) had the left side of her face turned upward. § 87(2)(b) and § 87(2)(b) were pleading with the officers not to touch § 87(2)(b) because she was only § 87(2)(b) old. Det. Fesler and PO Race were both screaming, “Shut the fuck up.” § 87(2)(b) said, “Man she’s only § 87(2)(b) old.”

At this point, Det. Fesler started “bashing” § 87(2)(b) in the side of the head with his shield, repeatedly, at least three times. § 87(2)(b) looked up and said, “Stop it!” at which point Det. Fesler struck her twice with the shield in her left jaw. § 87(2)(b) then saw PO Race jump over a dresser, and he struck her with an object she perceived as either a flashlight or a radio. § 87(2)(b) said, “Oh my god,” and turned her head back, at which time she saw Det. Fesler continue to beat § 87(2)(b) in the right side of the face, which began to bleed at this time. The officers handcuffed both § 87(2)(b) and § 87(2)(b) and exited at this time. The officers went into § 87(2)(b)’s adult son, § 87(2)(b) room, which is the second room on the upstairs floor and “commenced to tearing the room up.”

A third officer, also in riot gear entered with weapon drawn, but was “a lot nicer” than Det. Fesler and PO Race. He stated that § 87(2)(b) was only § 87(2)(b) and would not have to be handcuffed. This officer asked § 87(2)(b) if she knew what was going on or had any idea what the police were doing there. § 87(2)(b) and § 87(2)(b) replied that they did not. § 87(2)(b) was made to get down off the bed on his knees, and § 87(2)(b) asked if she could put on a pair of pants. This officer said to be still, that he would let her put on pants, and that everything was going to be alright. This officer kept repeating that everything was going to be alright. § 87(2)(b) was hysterically crying, because PO Race had said, “You want me to shoot you? I’ll fucking shoot you.” § 87(2)(b) was crying, § 87(2)(b) was sitting on his knees, hands in back of him, and he kept saying that everything was going to be alright. § 87(2)(b) told § 87(2)(b) that he was bleeding from his ear. This officer then uncuffed one of § 87(2)(b)’s hands, allowed her to get a pair of pajama bottoms, and re-cuffed her.

About half an hour after the officers first entered, A “real cocky” detective, later identified as PO Donald Abrams, ordered the family escorted downstairs. § 87(2)(b) asked him if she could see the warrant and PO Abrams kept saying she would see it in due time. Det. Fesler and PO Race escorted § 87(2)(b) and § 87(2)(b) downstairs in that order. § 87(2)(b) did not see Det. Fesler and PO Race again. § 87(2)(b) stated that the whole upstairs apartment was turned upside down, an observation she made while being escorted downstairs. When § 87(2)(b) and her family got downstairs to the first floor level, § 87(2)(b) observed that the whole first floor was destroyed as well. § 87(2)(b) was told to sit on a loveseat next to her daughter, who was not handcuffed. One of § 87(2)(b)’s friends, § 87(2)(b) who had just come from Jamaica the day before, was also handcuffed and sitting on a chair. § 87(2)(b) was handcuffed and sitting on a couch, and § 87(2)(b) sat next to him. § 87(2)(b) did not witness any interaction between § 87(2)(b) and any of the officers, but he told § 87(2)(b) that he had been getting ready to exit the home when the officers first entered.

§ 87(2)(b) stated that while seated downstairs, four plain clothes detectives, later assumed to include PO Abrams, PO Macaluso, and Sgt. Norris, continued to search the upstairs apartment. During the interim, a friend of § 87(2)(b) named § 87(2)(b) whose last name § 87(2)(b) does not know, had also come by the house and was handcuffed. § 87(2)(b) could hear glass breaking, furniture hitting the walls upstairs, and the officers making insulting comments about her home such as “What a dump, look at this shit.”

There were also four uniformed officers standing around downstairs, and one of them wanted to watch UPN Sports on television. When § 87(2)(b) stated she did not know what channel UPN was on, this officer said, “Where the fuck do you come from, you don’t know UPN?” § 87(2)(b) stated that she, § 87(2)(b) and § 87(2)(b) all asked PO Abrams for his name and badge number but he only replied, “Why do

you want to know my name?” All told, six people—§ 87(2)(b) § 87(2)(b) s friend § 87(2)(b) and § 87(2)(b) s girlfriend, § 87(2)(b) daughter of § 87(2)(b), were arrested at the scene. § 87(2)(b) stated that the officers did not ever show her a warrant.

§ 87(2)(b) and § 87(2)(b) were transported to the 113th precinct in a marked police van. § 87(2)(b) did not see a number on the van, but believes that two of the uniformed officers drove them. § 87(2)(b) was taken to § 87(2)(b) by EMS for her swollen jaw and because she is diabetic. § 87(2)(b) stated that a .22 caliber handgun was recovered from the home and three bags of marijuana were recovered from her son’s person. § 87(2)(b) had never seen any of these officers before, and the whole incident lasted about two hours. § 87(2)(b) further stated that her daughter was interrogated without her permission and placed in foster care.

Results of Investigation

This case was reassigned from former Inv. Elizabeth Bakalar to Inv. Mosolf on June 26, 2002.

Victim: § 87(2)(b)

§ 87(2)(b) was interviewed by IAB, Group 54, on March 7, 2002, at § 87(2)(b) (Enc. 9a-b). His medical records note that he complained of pain to his head and had been “hit by cops” and his Ambulance Call Report states that he was hit with a police shield (Encs. 8, 32). His IAB statement was generally consistent with his later CCRB interview, alleging that he had been hit once by a shield and roughed up when handcuffed.

§ 87(2)(b) was interviewed at the CCRB on March 21, 2002 (Enc. 10a-c). He stated that on March 6, 2002 at approximately 8:00 p.m., he was at his home at § 87(2)(b) in Queens. § 87(2)(b) had just bought a new car and had purchased 3-5 bags of marijuana earlier that day to celebrate. He was getting ready to leave his house to walk the dog, and got as far as his front hallway (about 4 feet from the front door) when a “whole truckful” of police officers broke down his front door and told him to “freeze.” § 87(2)(b) stated that there were approximately 40 police officers wearing all black, helmets, and shields. § 87(2)(b) also stated some of the officers were in plain clothes.

The first officer to enter § 87(2)(b) home, later identified as Det. Andrew Fesler, hit him in the left side of his face with a shield, causing him to fall to the ground. § 87(2)(b) asked several times, “Officer, what’s going on?” but each time the response from the officers was “shut the fuck up.” Another officer, later identified as PO McCormack, stepped on § 87(2)(b) back and neck while he was on the ground and handcuffed him. § 87(2)(b) could not see this officer as he was lying face down. § 87(2)(b) could not provide any details regarding the officers’ physical appearances, stating only that there were about 40 and that they were in both riot gear and plain clothes. The officers told § 87(2)(b) “You know what’s going on,” and stated that they had a call that he was selling guns and drugs out of his home. The officers did in fact find one gun in the home, but this belonged to a friend that had asked him to hold it the day before. The officers ransacked the whole house. Also home at this time were § 87(2)(b) mother, § 87(2)(b) his stepfather, § 87(2)(b) and his § 87(2)(b) old sister, § 87(2)(b) § 87(2)(b) best friend, § 87(2)(b) was downstairs helping him fix his car and did not see any of what occurred inside the home. Another friend from Jamaica whose name § 87(2)(b) can’t remember was also present.

Some of the officers went upstairs and § 87(2)(b) heard scuffling. When the officers came back downstairs, § 87(2)(b) and § 87(2)(b) were in handcuffs. § 87(2)(b) had a swollen jaw and § 87(2)(b) was bleeding from one of his ears, § 87(2)(b) could not recall which. § 87(2)(b) did not see who inflicted these injuries, but he asked the officers why his family was in handcuffs if it was he the officers were looking for. The officers just kept telling § 87(2)(b) to “shut the fuck up.” Midway through the incident, § 87(2)(b) wife, § 87(2)(b) came home and she too was handcuffed. § 87(2)(b) and § 87(2)(b) were all arrested. The officers were at § 87(2)(b) home for about four hours.

Victim: § 87(2)(b)

§ 87(2)(b) was interviewed by IAB, Group 54, on March 7, 2002, at Queens Central Booking (Enc. 15a-b). He was generally consistent with his later CCRB interview.

§ 87(2)(b) was interviewed at the CCRB on April 5, 2002 (Enc. 16a-c). He stated that on March 6, 2002, at approximately 7:45 p.m., he was at home at § 87(2)(b) in Queens with his fiancée, § 87(2)(b) and her § 87(2)(b) old daughter, § 87(2)(b) with whom he shares an upstairs apartment. § 87(2)(b)'s son, § 87(2)(b) also has a room in the apartment. The family was watching television when all of a sudden, § 87(2)(b) heard some noise. The door "came open" and two or three police officers in dark blue "swat team" uniforms ran inside. § 87(2)(b) said it was "hard to say" exactly how many officers entered, but they instructed § 87(2)(b) by saying, "On your stomach! On your stomach! Don't move, I'll shoot you!"

§ 87(2)(b) was imploring the officers to mind the fact that there was a § 87(2)(b) old child in the home. § 87(2)(b) heard one of the officers say, "Oh you're a wiseguy," and all of a sudden, § 87(2)(b) was hit at least twice with a police shield while being held down on his stomach by an officer later identified as Det. Fesler. § 87(2)(b) stated the next thing he knew he was "out of it," although he did not specify that he was technically unconscious. § 87(2)(b) stated that he was "dazed" he could not "see straight" and his "faculties were not even there." § 87(2)(b) stated he could not make out any physical identifying characteristics of any of the officers present. All he remembered was "getting [his] ass beat." § 87(2)(b) stated that he noticed later on that § 87(2)(b) had been hit as well, because the left side of her face was swollen. However, § 87(2)(b) did not see how § 87(2)(b) incurred these injuries since he was the first person who was "viciously attacked." § 87(2)(b) was not injured.

§ 87(2)(b) and § 87(2)(b) were escorted in handcuffs downstairs to the first floor where the landlady, whose name § 87(2)(b) does not know, resides. § 87(2)(b) does not know and cannot identify the officer that escorted him downstairs, but stated that at one point a plain clothes detective came upstairs. § 87(2)(b) does not know at what exact time he was handcuffed, and whether it was before or after he was hit with the police shield. § 87(2)(b) informed § 87(2)(b) that his right ear was bleeding. § 87(2)(b) only began to come to his senses again once downstairs. § 87(2)(b) could hear officers "wrecking things" upstairs, and stated that he observed that the house was wrecked. § 87(2)(b) stated that the landlady, a male friend of § 87(2)(b) and one of the landlady's friends whose names § 87(2)(b) does not know were present and handcuffed. The male friend had his pants down around his ankles. § 87(2)(b) stated that altogether six civilians were in the home. There were other plain clothes detectives downstairs, but § 87(2)(b) stated that an officer, later identified as PO Abrams, was especially "arrogant." § 87(2)(b) stated that two or three uniformed officers were also present. § 87(2)(b) did not witness any physical contact between any of the officers and § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) were taken down to the 113th precinct in a marked police van and then to Central Booking. § 87(2)(b) stated that he felt he had been abused, and Internal Affairs came to take a report. § 87(2)(b) later sought medical treatment for his ear and bruises on both arms two days later at § 87(2)(b) in Queens. § 87(2)(b) believes a total of six officers were present at his home for approximately an hour, and he had never seen these officers before.

On April 12, 2002, § 87(2)(b) saw a psychiatrist at a Veteran's Hospital who noted that § 87(2)(b) is a recovering cocaine addict who "was very upset about what happened several weeks ago." § 87(2)(b) claimed that "police broke into his apartment looking for the son of his girlfriend and that during 'the attack' they beat him and his girlfriend and abused her § 87(2)(b)-old child." (Enc. 17)

Victim: § 87(2)(b)

It should be noted that the officers remain unidentified in § 87(2)(b)'s statement, as she missed an appointment to view photos and did not respond to any further efforts to contact her.

§ 87(2)(b) was interviewed over the phone at her home on September 17, 2002 (Enc. 18a-c). § 87(2)(b) stated that, on March 6, 2002, at 8:00 PM, she had returned to her home early from nursing school (She does not live at § 87(2)(b) but gets her mail there, as the house belongs to her mother). § 87(2)(b) is § 87(2)(b)'s boyfriend and she called his home (he lives in the house belonging to her

mother) to let him know that she was home early. When no one answered at the house, § 87(2)(b) decided to walk over to find out what was going on.

As soon as she approached the block, she saw a “paddywagon” in front of § 87(2)(b)’s house. She thought little of it at first because the block has crime problems. She saw that the door to her mother’s house was open and she approached to enter. An officer in plainclothes (all officers in § 87(2)(b)’s complaint remain unidentified), PO1, stopped her and asked her who she was and what she was doing there. She stated her name § 87(2)(b)’s family knows her as “§ 87(2)(b)” so this is the name that she gave the officer) and explained that this was her mother’s house and she wanted to know what was happening. PO1 told her that they had a search warrant to search the house for drugs. § 87(2)(b) asked this officer to see the search warrant and he told her to go inside the house and he would show her the search warrant later. § 87(2)(b) stated that PO1 acted like he was going into his back pocket and followed her into the house.

The next thing § 87(2)(b) knew, PO1 placed handcuffs on her and made her get on the floor. § 87(2)(b) said, “You said you were going to show me the warrant and now you’re arresting me?” He replied, “Yeah, because you got a big mouth.” § 87(2)(b) complained that the handcuffs were tight and she wanted them loosened. She told him that he could loosen them up because she was not going to run. He told her, “I know you’re not going to run with your fat self. You ain’t going to make it too far.”

§ 87(2)(b) stated that § 87(2)(b) and § 87(2)(b)’s daughter, who all live on the second floor, were all downstairs in § 87(2)(b)’s mother’s apartment. § 87(2)(b)’s mother had gone to church with her other children, so was not present. Everyone was kneeling on the floor, handcuffed. The house was “a wreck” already. When § 87(2)(b) asked them what was going on, they all told her that the officers said that they had a search warrant, but none of them had seen it.

There were two other strangers also present in the living room. One was a friend of her mother’s who was visiting. The other was § 87(2)(b) a friend of § 87(2)(b). § 87(2)(b) recalled that § 87(2)(b)’s pants were at his knees. She noticed as the officers were taking them from the house to go to the station house. It struck § 87(2)(b) as strange, because § 87(2)(b) does not wear his pants low, as is the style for some people. § 87(2)(b) stated that he had asked earlier if he could pull them up. An officer (she could not recall which) then stated, “Why are y’all worried? Y’all never wear your pants up, anyway?” § 87(2)(b) was never informed why his pants were down in the first place and never really questioned it.

At some point, PO1 told § 87(2)(b) “You better shut up because I could bust your face open right now.” § 87(2)(b)’s daughter was crying while the officers were searching and asked to go upstairs to call her aunt. PO1 told her, “Go make a phone call here, downstairs. You have phones all over the house.” When the little girl protested that she did not live downstairs and could not use the phones downstairs, PO1 replied, “Too bad. In here is a dumpster, anyway. We just came and made it worse, so y’all need to call a garbage truck to finish after we leave.”

§ 87(2)(b) stated that she had been told that the officers had a warrant to search the second floor where § 87(2)(b) lived. § 87(2)(b) protested to the officers that they were searching the entire house where § 87(2)(b) does not live. The officers told her to shut up. They were upstairs looking for drugs, but had not found any when they came downstairs. They returned upstairs and came back stating that they had found a gun in § 87(2)(b)’s room. Because no one was taking responsibility for the gun, the officers said that everyone would take responsibility for it.

§ 87(2)(b) asked why they were going to press charges against her when she did not live at the house and the officers had no proof that she lived in the house or that the gun belonged to her. PO1 told her, “You came into the mix when everything was happening and, because you were questioning us too much, we’re going to press charges on you, also.” § 87(2)(b) continued to ask to see the search warrant, although it was never shown to her.

PO1 also called her names, like “fat pig,” “fat girl,” and “immigrant,” when she told them, “I know what you all are doing is wrong. I know that you are supposed to show the warrant when you’re in someone’s

home.” Trying to be funny, the officers told her, “You seem like you’ve been through the system already—you know a little bit too much.”

§ 87(2)(b) noted that people were injured. She saw that § 87(2)(b) s fingers and knuckles were “smashed” and one side of his face was “black and blue.” § 87(2)(b) told her that he had been hit with one of the police shields. She also saw that § 87(2)(b) was bleeding from the inside of his ear. He told her that he had been hit with the police baton. § 87(2)(b) s face was red.

When § 87(2)(b) saw the judge the next day, the charges were thrown out. The next day, § 87(2)(b) s mother was shown the warrant.

Other Witnesses or Victims

Numerous attempts were made to contact § 87(2)(b) including letters, phone calls, and a field trip. None were successful. The other woman who was present during the incident, § 87(2)(b) returned to Jamaica shortly after the incident date.

Subject Officer: PO Donald Abrams

PO Donald Abrams of the 113th Precinct was interviewed on April 8, 2002 (Enc. 19a-c). He stated that on March 6, 2002, he was working in plain clothes, as part of an Anti-Crime team with PO John Macaluso. At approximately 8:00 PM, PO Abrams was helping to execute a search warrant at § 87(2)(b) in Queens, and was assigned to an unmarked vehicle, the make and model of which he does not recollect. The ranking officers present during the execution of the search warrant were Sgt. George Norris and Cpt. John Essig.

PO Abrams stated that Emergency Services entered the location and secured the premises, then giving PO Abrams’ team the OK to enter and search the premises. PO Abrams observed an ESU team—none of whose names he knows—enter the location from out front but did not observe the team’s activity inside. When PO Abrams entered the home, ESU had already left the premises, and six individuals were handcuffed, three men and three women. The home has a downstairs floor and an upstairs with three bedrooms and a bathroom. Three individuals were handcuffed upstairs and three were downstairs. PO Abrams searched both the upstairs and downstairs of the home, where he found a loaded handgun in plain view in an upstairs bedroom, and a quantity of marijuana, the amount of which he does not recall. PO Abrams never heard any officer use profanity or have any physical interaction with any civilian at the location. PO Abrams does not recall any civilian asking for his or any other officer’s name or badge number, and recalls no officer refusing such a request.

The civilians did not understand what the warrant was about and “didn’t want [the police] there.” PO Abrams was present for 3.5 hours, and stated that no officers aside from himself, his partners, Cpt. Essig, Emergency Services, and some uniformed officers whose names PO Abrams does not know were present. The uniformed officers were securing the outside of the location. All the arrested parties were transported back to the 113th precinct by a marked unit that PO Abrams does not recall. PO Abrams observed no injuries on any of the handcuffed persons, and does not believe any of them requested or received medical treatment. PO Abrams had no contact with the civilians in the home, other than obtaining pedigree information at the 113 precinct stationhouse.

PO Donald Abrams was interviewed for the second time at the CCRB on October 10, 2002 § 87(2)(g) (Enc. 20a-b). PO Abrams recalled the arrival of § 87(2)(b) and stated that he was notified while he was searching upstairs. In a bedroom upstairs, he had found a loaded firearm as well as mail addressed to § 87(2)(b) and § 87(2)(b). He went downstairs and asked § 87(2)(b) what she was doing at the location. She stated that she lived at the location and told him her name. PO Abrams realized that her name matched the name he had seen on the mail. § 87(2)(b) showed PO Abrams identification and PO Abrams radioed for Sgt. Norris to verify his intention to arrest § 87(2)(b).

PO Abrams stated that § 87(2)(b) was fully compliant during this exchange and was giving him no problems. She did not seem to be upset, but did ask to see the search warrant, which was in PO Abram’s possession and which he showed to her in the living room, where § 87(2)(b) was placed after her arrest. PO

Abrams believed that § 87(2)(b) was arrested in the foyer, where he had first encountered her. When PO Abrams was asked if he had been the officer whom § 87(2)(b) had approached first, outside of the location, he stated that he was not and that he did not know whom this officer was.

When § 87(2)(b) was placed in the living room, PO Abrams returned upstairs to continue the search, so he was unaware if she became agitated. PO Abrams did not recall who was present in the living room with § 87(2)(b) and the other residents. When asked if he had ever come downstairs to have further contact or conversation with § 87(2)(b) PO Abrams stated that he had come down and shown the search warrant to those present in the living room. He could not recall who had asked to see it or if anyone there had specifically asked, but stated that he always makes it a habit to show it to everybody.

PO Abrams did not recall § 87(2)(b) asking a lot of questions. When PO Abrams came downstairs to continue the search, the residents were still in the living room, but he had no interaction with them as he searched. PO Abrams was involved in the field search of the residents at the location, but had no recollection of anyone's pants being removed or falling down. He did not recall ever seeing any civilians with their pants down and stated that there was no reason why anyone would be strip searched at the location. He never stated or heard any officer state, "Why are you worried? You all never wear your pants up anyway."

PO Abrams never stated to § 87(2)(b) or heard any other officer state to § 87(2)(b) "fat pig," "fat girl," or "immigrant." He never told her and never heard another officer tell her, "I know you ain't going to run with your fat self, you won't make it very far." He never made reference or heard any other officer make reference to the house being a dumpster or needing a garbage truck. PO Abrams recalled that the house was particularly messy before they began their search. PO Abrams never told § 87(2)(b) and never heard another officer tell § 87(2)(b) that she was arrested for asking too many questions. He never heard any officer and he himself never threatened anyone on the scene.

Subject Officer: Det. Andrew Fesler

Det. Andrew Fesler of ESU was interviewed at the CCRB on August 14, 2002 (Enc. 21a-b). He referred to the ESU Warrant Execution Request, which indicated that he was the bunker on the first entry team, accompanied by PO Race as security. Both were in full ESU gear. The two officers proceeded directly to the second floor to secure the second floor and anything higher, encountering no one that Det. Fesler could recall on the first floor.

Det. Fesler recalled entering a bedroom in which a male and two females were sitting on the bed. The civilians, assumed to include § 87(2)(b) and § 87(2)(b) did not respond to repeated verbal requests to get on the floor. § 87(2)(b) just continued sitting on the bed smoking his cigarette. Because Det. Fesler has his bunker shield in one hand and a firearm in another, he used his bunker shield, as is procedure, to push § 87(2)(b) to the ground. He did not hit § 87(2)(b) with the shield, but did push him off the bed. When asked if § 87(2)(b) could have received injury from this move, Det. Fesler stated that he could have although he could not recall any specific injuries. Det. Fesler also recalled that PO Race slung his gun to free his hands and then physically struggled with § 87(2)(b) in order to get him handcuffed. When asked about any injury to the left side of § 87(2)(b)'s face, Det. Fesler stated that this could have been a result of being pushed to the ground or of the resultant struggle with PO Race.

§ 87(2)(b) then became upset and "tried to get involved," so Det. Fesler used his shield to hold her back. He did not strike her with his bunker shield, but he did push her off the bed with his shield.

After these individuals were on the floor and handcuffed, Det. Fesler and PO Race would have secured the rest of the second floor and any potentially higher floors before leaving the location to the officers from the 113th Precinct. Det. Fesler stated that he did not witness the actions of the 113th officers, as he left after securing the location.

Det. Fesler was not told later of anything out of the ordinary that occurred on the first floor. Det. Fesler noted that his team does between three and five such search warrants a day, mostly resulting in arrests.

It was pointed by DEA Rep. Alongi that PO Race did not have a bunker shield.

Subject Officer: PO Donovan Race

PO Donovan Race of ESU squad 9 was interviewed on June 6, 2002 (Enc. 22a-d). He stated that on March 6, 2002, he executed two search warrants, the second of which occurred at § 87(2)(b) in Queens at approximately 8:00 p.m. PO Race has no independent recollection of this particular warrant, but looked at the paperwork pursuant to the warrant in order to reference it and explain his role in the warrant. PO Race looked at the warrant execution request and confirmed that the members of the Apprehension Team he was working with were accurately reflected on the sheet.

PO Race stated that he executes a large volume of warrants for the 113th precinct and therefore does not recall the precise details of this particular warrant. The 113th precinct is a very active warrant precinct, and on average PO Race participates in three warrants there per week. While PO Race did not specifically recall this incident, he explained the general procedure his team follows.

PO Race does not maintain the same role during each warrant, but on this warrant he was the first MP5 operator through the door. An MP5 is a weapon and the officer bearing it carries it behind the officer who acts as a body-bunker holding a ballistic shield. There are two MP5 and body-bunker teams that go through, and based on the paperwork for this warrant, he and PO Fessler were the first MP5/body-bunker team to make entry into the two story home. As soon as the officers enter the location, they announce their presence to the occupants in a loud voice and tell them to get down on the ground. Guns would be pointed, but no verbal threats of force would be issued.

Based on the paperwork for this warrant, there were three people at the location, and PO Race handcuffed one male black on the second floor of the home. PO Race has no recollection of his interaction with this specific individual. Every occupant who is confronted in an entry is instructed, "Police, get down" on the ground. If an individual fails to get down on the ground, the officers will physically grab them and put them on the floor for everyone's safety. PO Race stated that the only circumstances under which he would strike anyone with a police shield would be in self-defense. PO Race stated that he would have recalled that happening if it had in fact occurred. The paperwork further shows that PO Bauer and PO McCormack handcuffed individuals on the first floor. Based on this, and the fact that the paperwork shows that PO Race handcuffed someone on the second floor, PO Race believes he went right to the second floor and split off from PO Bauer and McCormack upon entry. PO Race stated that he only handcuffed one person on the second floor, but that it's possible that there was another civilian on the second floor.

PO Race stated that it usually takes five or less minutes to secure a home such as this, and every occupant of the home is handcuffed. PO Race could not recall if there were any minors at this particular location, or if anyone at the location appeared injured. Sgt. Urban is the permanent Apprehension Team supervisor, and makes tactical entry with the team, but also generally directs the team members if specific situations come up that they're not sure how to handle. PO Race and his team clear the house for the officers for whom they're executing the warrant, and don't leave until those officers enter and state that they can take over. PO Race stated that when his team is relieved, they move on to the next warrant and would not deal with any injuries potentially sustained by civilians at a given location.

Subject Officer: PO Joseph McCormack

PO Joseph McCormack of ESU squad 4 was interviewed on June 20, 2002 (Enc. 23a-d). He stated that he has no independent recollection of executing a search warrant on March 6, 2002 at § 87(2)(b) in Queens. PO McCormack stated that he executes about three or four warrants per day, and that the number he executes for the 113th precinct specifically vary from week to week. Although PO McCormack has no independent recollection of this particular warrant, he looked at the paperwork pursuant to the warrant in order to reference it and explain his role in the warrant. PO McCormack looked at the warrant execution request and confirmed that the members of the Apprehension Team he was working with were accurately reflected on the sheet, and that Sgt. Thomas Urban was the team supervisor.

PO McCormack looked at the warrant execution report that indicated he arrested one male black on the hallway of the first floor of a private house. PO McCormack has no independent recollection of effecting

that arrest. PO McCormack stated that of the three or four warrants he executes per day, the majority result in arrests. On this day, again according to police documents as opposed to his personal recollection, PO McCormack was assigned to tool team. His responsibilities included accessing the premises, providing entry to the team, and securing any persons in the premises who were unattended. PO McCormack stated he does not recall anyone being injured at the location, and does not recall striking anyone with a police shield or employing physical force to affect any arrests, although he stated that striking someone with a ballistic shield is something that might happen in the normal course of executing a warrant.

PO McCormack stated he did not recognize the names of PO Donald Abrams, PO John Macaluso or Sgt. George Norris for whom he executed this warrant. PO McCormack stated that he did not recall observing the activity of these officers in the home.

Witness Officer: PO John Macaluso

PO John Macaluso of the 113th Precinct was interviewed on April 22, 2002 (Enc. 24a-d). He stated that on March 6, 2002, he was working in plain clothes on an Anti-Crime team with PO Donald Abrams and Sgt. George Norris. PO Macaluso does not recall what specifically he was wearing beyond his “NYPD Raid jacket.” The officers were in an unmarked Chevrolet. At approximately 8:00 p.m., the officers executed a search warrant at § 87(2)(b) in Queens. § 87(2)(e), § 87(2)(f)

On the date of the incident, PO Macaluso was assigned to assist PO Abrams in executing the warrant. Prior to executing the warrant, PO Macaluso attended a tactical meeting at the 113th precinct with Sgt. Norris and Emergency Services (ESU) personnel, none of whose names PO Macaluso knows. Sgt. Norris went over assignments for the warrant, and PO Macaluso was assigned rear security.

Upon arriving at the location, PO Macaluso went to the back of the residence as directed. ESU made their entry into the home, and approximately 15-30 minutes later, informed PO Macaluso and his partners that the home was clear for entry. PO Macaluso, Sgt. Norris, and PO Abrams entered the location after ESU left and the two units were never inside the home at the same time. PO Macaluso did not witness any portion of ESU’s entry into the residence as they entered through the front and he was securing the back of the home. PO Macaluso did not hear any officer use profanity with a civilian. PO Macaluso stated that during this time, Sgt. Norris and PO Abrams were also outside. The precinct commanding officer, Cpt. John Essig, was also present, as well as several ESU and uniformed officers whose names PO Macaluso does not know. The uniformed personnel was present to block traffic or to take an injured person to the hospital if need be.

After ESU gave the all-clear, PO Macaluso entered the home from the front entrance. When he entered the location, he observed about 4 or 5 individuals—a few men and two females—in handcuffs, sitting on a couch. There was also a female juvenile present who was sitting on a chair, unhandcuffed. PO Macaluso did not witness the apprehension or handcuffing of these persons. None of these individuals appeared injured to PO Macaluso and he heard none of them request medical attention. Additionally, these individuals had “nothing negative to say” towards PO Macaluso and he had no problems with them. PO Macaluso’s role once inside the location was solely to assist Sgt. Norris and PO Abrams while they conducted the search. PO Macaluso helped by carrying equipment behind them through the entire home. PO Abrams recovered marijuana and a loaded firearm. PO Macaluso stated that no one was strip-searched at the location, and he witnessed no such search. PO Macaluso stated that his shield was exposed, but no member of the household asked for his name or shield number and PO Macaluso refused no such request. PO Macaluso stated that the only other individual to arrive throughout the incident was a woman who came to pick up the juvenile. No additional arrests were made in PO Macaluso’s presence. PO Macaluso was at the location for an hour and a half to two hours, and altogether there were about 10-12 officers present.

PO John Macaluso was interviewed for the second time at the CCRB on September 30, 2002, § 87(2)(g) (Enc. 25a-b). PO Macaluso stated that he was the assisting officer on the search warrant, wearing modified uniform (NYPD windbreaker). PO Macaluso stated that he was in the living room with the handcuffed residents for a short period of time, but then helped PO Abrams and Sgt. Norris conduct a search of the residence. When asked if there was one of them that had more contact with the civilians than the others, PO Macaluso stated that they all had equal contact with the

individuals at certain times. PO Macaluso stated that there were uniformed officers on the scene in charge of such things as traffic posts and hospital autos. When asked specifically about a uniformed officer who may have been sitting with the residents in the living room watching television, PO Macaluso could not recall anyone. He was shown a copy of the roll call, but was still unsure. He stated that none of the sector cars would have been present.

PO Macaluso did not recall the arrival of § 87(2)(b) and, when supplied with further details as to § 87(2)(b)'s arrival, appearance, and behavior, was still unsure. When asked if he could recall anyone new arriving on the scene after the residents had been handcuffed, PO Macaluso stated that he recalled the juvenile daughter. PO Macaluso stated that PO Abrams was carrying the search warrant, but he did not recall anyone asking either himself or PO Abrams to see the warrant. When asked if any civilians present ever had their pants down for any reason at all, PO Macaluso stated that this never occurred in his presence and no one ever brought such a matter up with him. PO Macaluso did not search anyone to the point of removing their pants and did not witness any other officers search anyone in such a manner at the scene. He never heard any officer state, "Why are y'all worried? You never wear your pants anyway."

PO Macaluso stated that there were approximately five or six people seated in the living room and, to the best of his knowledge, all of these people had been present in the home when the search warrant was begun. PO Macaluso recalled two Black, male residents, but stated that he never said and never heard any other officer say to one of these males, "You better shut up because I could bust your face open right now." PO Macaluso never called any female on the scene, nor did he ever hear any other officer call anyone, "fat pig," "fat girl," or "immigrant." He never stated or heard anyone state, "I know you're not going to run with your fat self, you ain't going to make it very far." He could not recall any officer making reference to the house as a "dumpster" or telling anyone to call a garbage truck to clean up. He was never asked for his name and shield number and never heard anyone ask any other officer for the information. He never told any woman, and never heard any other officer tell any woman, that she had been arrested for asking too many questions.

PO Macaluso also could not recall any woman on the scene protesting more than the other civilians. When asked if it would be procedure to handcuff another individual who had arrived on the scene in the process of conducting the search warrant, PO Macaluso stated that he was unsure—perhaps if this individual was a subject or if she interfered in the search warrant in any manner. PO Macaluso could not recall anyone, specifically, interfering.

Witness Officer: Sgt. George Norris

Sgt. George Norris of the 113th Precinct was interviewed on April 24, 2002 (Enc. 26a-d). He stated that on March 6, 2002, he was working in plain clothes and a Raid jacket, in black Chevy Lumina #709 with PO Donald Abrams, PO John Macaluso, and he believes PO Scott Carson. At approximately 8:00 p.m., Sgt. Norris supervised a search warrant executed at § 87(2)(b) in Queens.

Emergency Services (ESU) made the entry into the home and Sgt. Norris was supervising rear security in the back of the home with PO Macaluso and perhaps PO Carson. After approximately 15 minutes, ESU cleared the location and Sgt. Norris entered the home. PO Abrams was assigned as the arresting officer at the front of the location and his job was to point out the right door to ESU. Also present were Duty Captain John Essig, and Lt. Michael Tarpey, the Integrity Control Officer. There may have been uniformed officers conducting traffic at the location, but Sgt. Norris does not know for sure.

When Sgt. Norris entered the location, 5-8 occupants of the home had already been handcuffed by ESU. Sgt. Norris could not recall if every occupant was actually in handcuffs, but they were all in a controlled environment. There was one female juvenile present. Sgt. Norris did not observe any injuries on any of the home's occupants and did not hear them complain of any. They asked to see the search warrant and PO Abrams showed it to them. Sgt. Norris conducted a walk-through of the home, supervising the search conducted by PO Abrams with PO Macaluso assisting. There was a gun in plain view on one of the dressers inside one of the bedrooms. Sgt. Norris heard a female yelling downstairs, and went down to see what the problem was. A woman who stated she was the juvenile's aunt and a Corrections Officer asked who Sgt. Norris was. Sgt. Norris identified himself to this woman and showed her the warrant. The

woman wanted to take the juvenile but Sgt. Norris stated that the juvenile could not just be released because there were guns and drugs—a quantity of marijuana—at the location.

Sgt. Norris specified that he did not witness any physical or verbal interaction between any of the ESU officers and the occupants of the home because his unit is not allowed to enter until ESU calls the area clear and allows them in. Sgt. Norris stated that a female came into the home after he had been in the home for awhile and she too was arrested. Sgt. Norris did not recall any additional males arrested or strip-searched at the location, although he did specify that strip-searches are authorized in cases where guns and drugs are involved, but that such searches would be conducted at the command. Sgt. Norris called for a vehicle to transport the arrested persons back to the station house, which it did. Sgt. Norris was unsure if all the prisoners were transported in the same van.

Sgt. George Norris was interviewed for the second time at the CCRB on October 10, 2002§ 87(2)(g) (Enc. 27a-b). Sgt. Norris stated that he was upstairs, executing the search warrant, and was radioed that another individual who lived at the location had arrived. He sent PO Abrams, who was upstairs with him searching, downstairs to deal with this individual. He instructed PO Abrams to verify that this female individual did live at the location and, if so, to place her under arrest pursuant to the search warrant.

PO Abrams went downstairs and returned upstairs to tell Sgt. Norris that the female did live at the location and had been placed under arrest. Sgt. Norris was unaware as to how PO Abrams ascertained whether or not the female lived at the location, but stated that oftentimes mail is used as a verification.

Sgt. Norris had no direct dealings with this female individual and could not physically describe her. He stated that PO Abrams did deal with her directly. PO Abrams did not tell Sgt. Norris anything remarkable regarding her arrest. Sgt. Norris did not recall seeing this specific female in the living room, but stated that he probably did see her there. He could not recall anything that stood out regarding her behavior. Specifically, he did not recall her protesting or asking to see the search warrant. Sgt. Norris stated that PO Abrams had the search warrant and that he had shown the individuals in the living room the search warrant, though he was not sure if this had been before or after the new female had arrived.

Sgt. Norris could not recall anyone being searched to the point of his or her pants falling down. He never saw any individual whose pants were falling down. He stated that, often times when they conduct search warrants, people are not dressed. He never stated and never heard any officer state, “Why are y’all worried, you all never wear your pants up anyway.”

Sgt. Norris never witnessed any conversation between PO Abrams and this female. He never stated and never heard any officer stated to this female that she had been arrested because she had a big mouth or was asking too many questions. He never stated and never heard any officer state to this female that she was “fat” or an “immigrant” or that she “couldn’t run away with her fat self.” He could not recall any officer stating and he never stated that the house was a wreck or a dumpster. He never heard any officer threaten any civilian.

Sgt. Norris stated that he could not recall any other officers specifically on the scene, but stated that they usually use community policing or Field Training Unit officers for traffic posts or watching the prisoners while the location is searched. Specifically, Sgt. Norris could not recall a uniformed officer who was in the living room watching the prisoners.

Witness Officer: Sgt. Thomas Urban

Sgt. Thomas Urban of ESU was interviewed on May 21, 2002 (Enc. 28a-d). He had no independent recollection of executing a search warrant at § 87(2)(b) in Queens on March 6, 2002. Sgt. Urban stated that he supervises the execution of approximately 40 warrants per month, and that these warrants are often conducted in private homes for the 113th precinct. Sgt. Urban does have memo book entries regarding this incident, during which he was the Apprehension Team supervisor. The entry states only that a search warrant was executed at § 87(2)(b) at 8:00 p.m.. Sgt. Urban had no independent recollection of whom he was working with, but identified his team from the ESU report as PO Andrew

Fesler, PO Donovan Race, PO Dale Schultz, PO Gregg Abbate, PO Edward Bauer, PO Joseph McCormack, PO Robert Yaeger, and PO Michael Westcott. The officers were assigned to an unmarked white van.

Despite his lack of independent recollection about this specific warrant, Sgt. Urban looked at the ESU report and stated what each officer's role would have been in executing the warrant. He stated that PO Fesler would have been the first officer through the door, equipped with a hand-held body bunker. PO Race would have been second, equipped with a 9mm sub-machine gun. PO Schultz would have been the third officer in, also equipped with a hand-held body bunker. PO Abbate would have been the fourth person through the door, also equipped with a 9mm sub-machine gun. The fifth person through the door would have been Sgt. Urban himself. PO Bauer, and Dt. McCormack were all assigned to tools and their job would have been to gain entry into the location. PO Yaeger was also assigned to tools, and PO Westcott was assigned to door security, equipped with a mini 14 rifle.

Sgt. Urban does not recall the lay-out of § 87(2)(b). He does not independently recall how many occupants were in the home or how many were arrested, but he confirmed that the ESU paperwork listed 3 people as being at the location and 2 arrested. He noted that PO McCormack handcuffed one male black, PO Race handcuffed one male black, and PO Bauer handcuffed one female black, as indicated on the ESU report. Sgt. Urban stated that according to the paperwork, he handcuffed no one at the location. Nothing particular stands out in Sgt. Urban's mind regarding this warrant. He does not recall any individual injured or struck with a police shield at the location. Sgt. Urban stated that in his role as an Apprehension Team supervisor, he may become involved with gaining entry to the location, but his primary role is to supervise the location to make sure everything is secured. This can take about five to ten minutes before the team or teams of detectives come in to take over. Once Sgt. Urban is satisfied that a location is secure, he indicates to the officers outside to come in and take custody of detained individuals, and he and his team leave the location.

Witness Officer: PO Edward Bauer

PO Edward Bauer of ESU squad 6 was interviewed on June 7, 2002 (Enc. 29a-d). He stated that on March 6, 2002, he executed a search warrant at § 87(2)(b) in Queens with the Apprehension Tactical Team. PO Bauer had no independent recollection of the team he was working with that day, but identified the team members from the warrant execution report as PO Andrew Fesler, PO Donovan Race, PO Dale Schultz, PO Gregg Abbate, Sgt. Thomas Urban, PO Joseph McCormack, Dt. McDonald, PO Robert Yaeger, and PO Michael Westcott. The officers were assigned to an unmarked vehicle that could "best be described as a bread truck shaped vehicle." PO Bauer described the roles of the people on his team. PO Fessler was the lead shield operator, whose job it was to be the first person to enter the location and hold the shield to fend off potential gunfire. PO Race was assigned to an MP5, and his role was to stay together with PO Fesler and go into each room to clear it together. PO Schultz also carries a ballistic shield, and PO Abbate was assigned to an MP5 as well. These four officers form the first two entry teams. Sgt. Urban's job was to supervise the operation and provide tactical support for the team in securing people inside the location. The other officers bring tools to the door, and depending on the composition of the door decide which tools to use to breach the door. Once the door is breached the remaining officers in the line follow behind and provide support. Only PO Fessler and PO Schultz carried shields.

At approximately 8:00 p.m., PO Bauer and his team executed a warrant at the aforementioned location. All officers entered with guns drawn. PO Bauer stated that he participates in approximately one warrant per week within the confines of the 113th precinct. PO Bauer was assigned to tools, and his responsibility was to breach the door so that the team could make entry. PO Bauer's responsibilities were then to follow in the rest of the team and secure any occupants inside by handcuffing them. On this particular warrant, PO Bauer was getting ready to boom the door with a battering ram, when it was opened from the inside by an occupant. The first officers to deal with this occupant would be the first shield team, composed of Det. Fesler and PO Race. This individual appeared surprised, and verbal commands were given to him to get down on the ground. Because the individual was opening the door at the same time the team was coming in, the man was pushed down to the ground. PO Bauer saw the man get pushed down by the lead shield officer—Det. Fesler, but did not observe him get struck by the shield.

The team made its entry, and PO Bauer broke off to a room on the left side that appeared to be the living room. There was a female in the location who stated she was a visitor, and was told to go down to the ground face down, an order with which she complied. PO Bauer handcuffed this individual and proceeded to conduct an immediate search of the location. PO Bauer spent all his time at the location in this one room. Once the entire team determined that everyone in the house was secure, the precinct officers for whom ESU had executed the warrant came in and relieved them. PO Bauer stated that he only dealt with the one aforementioned individual on the first floor of the location, and was at no time on the 2nd floor of the location. PO Bauer did not know which officers were on the 2nd floor of the location. PO Bauer observed no occupant of the home get struck with a shield, and no occupants appeared injured to PO Bauer. PO Bauer does not recall hearing any requests for medical treatment.

Witness Officer: PO Dale Schultz

PO Dale Schultz of ESU was interviewed at the CCRB on August 14, 2002 (Enc. 30a-b). PO Schultz referred to the ESU Warrant Execution Request for March 6, 2002. He stated that he had been a member of the second entry team, using the bunker shield with PO Abbate as his security. He did not recall encountering any civilians on the first floor or specifically at the door of entry. He did not recall witnessing any ESU officers encountering any civilians. After securing the location, PO Schultz left the location and did not witness any of the actions of the 113th Precinct officers.

Based on the paperwork, PO Schultz stated that this was a three story house, indicating that Det. Fesler and PO Race would have gone to the second or third floor while PO Schultz would have gone to the first floor or basement. According to the paperwork he did not encounter any civilians. PO Schultz stated that this could have been a day on which the team executed anywhere from five to ten warrants, most of which resulted in arrests.

PO Schultz stated that it is standard procedure to use the bunker shield to deflect any civilians or to push them to the floor if they did not comply, as the officer's other hand is holding a gun and is not available for physical contact.

The handcuffing was performed by PO McCormack, PO Race, or PO Bauer.

Medical Records

The Ambulance Call Report for § 87(2)(b) notes that he was suffering from not taking his insulin, as he is a diabetic (Enc. 32). It also notes that § 87(2)(b) complained of face pain from blunt force. It notes that § 87(2)(b) stated in his interview summary, "I was hit with a PD shield." It also notes a contusion to his lower left eye. The medical treatment of prisoner report simply notes that § 87(2)(b) is a diabetic and needed a shot. (Encs. 57)

§ 87(2)(b) was then taken to § 87(2)(b) Emergency Room where he was treated for symptoms resulting from not taking his insulin. His nursing assessment interview summary notes that he mentioned that he "was hit by the cops." His diagnosis addresses the diabetes-related problems as well as a contusion on the left side of the face. § 87(2)(b) was "discharged against medical advice" on § 87(2)(b). He was still suffering from the affects of not taking his insulin. (Enc. 31a-l)

§ 87(2)(b) was also taken to the emergency room at § 87(2)(b). She also suffered from diabetes related problems, as she also had not taken her insulin for the day. She mentioned that she had jaw pain from being struck, but did not explain how this had occurred. (Enc. 35a-e)

§ 87(2)(b) went to § 87(2)(b) on § 87(2)(b) complaining of "sharp pain" and "buzzing" in his ear. The history notes work related noise exposure. On § 87(2)(b), a follow up appointment notes that § 87(2)(b) among other problems, reported a hit to his right ear days earlier. § 87(2)(b) then saw a psychiatrist on § 87(2)(b), who noted that § 87(2)(b) is a recovering cocaine addict who "was very upset about what happened several weeks ago." § 87(2)(b) claimed in his interview summary that "police broke into his apartment looking for the son of his girlfriend and that during 'the attack' they beat him and his girlfriend and abused her § 87(2)(b)-old child." § 87(2)(b) had been feeling

depressed since the event and was anxious whenever he saw policemen. § 87(2)(b) had two more follow up appointments regarding the hearing loss, which is never attributed to anything specific. (Enc. 33a-h)

Documents

The relevant command log notes that PO Abrams was present at the 113th Precinct station house at 9:50 PM with all six arrests, all charged with § 87(2)(b) after the execution of the search warrant at § 87(2)(b) (Enc. 58). All defendants are stated to be in normal mental and physical condition. The complaint report names all arrests and states that the .22 caliber loaded pistol, marijuana, packaging, a scale, and live .22 caliber rounds were recovered from the location. (Enc. 39a-c)

§ 87(2)(b)'s arrest report and OLBS are consistent with other documents (Encs. 40, 41). She was charged with § 87(2)(b). The arrest report states that no force was used in the arrest and that § 87(2)(b) was not injured. § 87(2)(b)'s OLBS and arrest report are also consistent (Encs. 42, 43). § 87(2)(b)'s arrest report is basically consistent, but also has another charge for § 87(2)(b) (Enc. 44, 45). The property invoices note evidence consistent with these charges (Enc. 56a-g).

The warrant execution request to ESU confirms that Sgt. Urban's team assisted at the incident location. It notes under "special conditions" that the warrant authorized the officers to search for guns (Enc. 37a-d). The post execution plan from ESU states that the team placed three people into custody and did not recover evidence (Enc. 37a-d). It also notes that PO McCormack secured a Black male in the first floor hallway. PO Race secured a Black male on the second floor. PO Bauer secured a Black female on the first floor. There is no mention of PO Race securing § 87(2)(b) which also occurred on the second floor.

The warrant was obtained by PO Abrams on March 5, 2002 (Enc. 36) A pre and post search warrant execution plan were ordered from the 113th precinct, but only a post execution plan was delivered. Follow up contact and requests did not produce the pre-execution search warrant plan (Enc. 38).

Court Documents

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

Established Facts

On the evening of March 6, 2002, officers from ESU and from the 113th Precinct executed a search warrant obtained by PO Abrams. Several arrests were made, including § 87(2)(b) and § 87(2)(b)

Officer Identification

Because many of the allegations made in this case involved ESU officers who executed the entry into the home and secured the location, all in full ESU gear, it was difficult to determine exactly who played which role. Through interviews, however, it became apparent that Det. Fesler and PO Race were the two officers who, upon entry, headed straight upstairs to the second floor, where they encountered § 87(2)(b) and § 87(2)(b)'s daughter. Det. Fesler, who was carrying the bunker shield, § 87(2)(g) Det. Fesler admitted to using his shield to either restrain or bring to the ground both of these individuals. § 87(2)(g) § 87(2)(b) specifically identified this officer as the one who stated that they would get shot if they did not get to the floor. § 87(2)(g)

PO Bauer noted that he saw Det. Fesler push § 87(2)(b) down with the police shield in the front hallway at initial entry. § 87(2)(g)

PO McCormack stated that he arrested one Black male in the hallway of the first floor of the building.

§ 87(2)(g)

§ 87(2)(b) stated that the subject officer was the officer who held the warrant and who did not provide his name and shield number to her. § 87(2)(b) stated that there were several plainclothes officers conducting the search and this subject officer was one of these men. The possible subject officers are thus PO Abrams, PO Macaluso, and Sgt. Norris. PO Abrams had the search warrant and Sgt. Norris stated that § 87(2)(b) asked and PO Abrams showed it to her. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) stated that a uniformed police officer sat on her couch and asked, “Where the fuck do you come from, you don’t know UPN?” No officers interviewed knew the names of the uniformed officers at the scene. § 87(2)(b) was the only civilian who reported this man’s words or the fact that any officers were watching television. § 87(2)(g)

§ 87(2)(b) could not be reached to identify the subject officer involved in, or even confirm, the allegation of a strip-search. § 87(2)(g) § 87(2)(b) failed to appear to view photos to identify the subject officer of her four allegations, § 87(2)(g)

Credibility

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) She was the only civilian interviewed who mentioned several of the less serious allegations of discourteous language and was also the only one to allege that she, § 87(2)(b) and § 87(2)(b) asked for PO Abrams’ name and shield number.

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation A) Abuse of Authority: PO Donald Abrams entered and searched § 87(2)(b) in Queens.

PO Abrams obtained a no-knock search warrant for this location on § 87(2)(b), which states, “You are therefore commanded between the hours of 6:00 AM and 9:00PM, without first announcing your purpose and or your authority, to make a search of § 87(2)(b) St. Albans, County of Queens...” (Enc. 36)

§ 87(2)(g)

Allegation B) Abuse of Authority: PO Donald Abrams refused to provide his name and shield number to § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) was the only civilian interviewed to make this allegation. She was relatively sure that she heard other officers refer to him as “Abrams,” but stated that he did not provide the information when asked. § 87(2)(g)

§ 87(2)(g)

Allegation C) Force: Det. Andrew Fesler struck § 87(2)(b) with a police shield.

§ 87(2)(b) stated that he was hit with a police shield when he first encountered officers entering his home. ESU officers who carry these shields employ them to assist in bringing people to the ground. § 87(2)(g)

The Ambulance Call Report notes that § 87(2)(b) stated he had been hit with a police shield and also notes a contusion below his left eye. The IAB photos do not clearly display this injury, but some swelling is visible. § 87(2)(g)

§ 87(2)(g)

Allegation D) Force: Det. Andrew Fesler struck § 87(2)(b) with a police shield.

§ 87(2)(b) consistently asserted that Det. Fesler struck him several times on his face with the police shield. § 87(2)(b) also consistently alleged that she saw § 87(2)(b) get hit in his face repeatedly by the shield. § 87(2)(b) and § 87(2)(b) allege that § 87(2)(b) had blood coming from his ear after being struck with the shield, which is supported by the photo taken by IAB (Enc. 60). § 87(2)(b) sought medical attention several times for this injury § 87(2)(g)

As previously stated, ESU officers use their shields to assist in bringing civilians to the ground during the potentially dangerous situation of entering and securing an unknown location. § 87(2)(g)

It is Det. Fesler’s assertion that he simply pushed § 87(2)(b) from the bed with his shield when § 87(2)(b) did not respond to his orders to get to the floor. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E) Force: Det. Andrew Fesler struck § 87(2)(b) with a police shield.

§ 87(2)(b) clearly and consistently stated that, after protesting to the officers' use of the shield against § 87(2)(b) she was struck twice on the left side of her face with the shield. § 87(2)(b) also consistently supported this. Det. Fesler stated that § 87(2)(b) then became upset and "tried to get involved," so Det. Fesler used his shield to hold her back. He claimed that he did not strike her with his bunker shield, but he did push her off the bed with his shield.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation F) PO Donovan Race struck § 87(2)(b) with a radio.

§ 87(2)(b) stated that, after lying face down on the bed, she looked up and saw Det. Fesler strike § 87(2)(b) with the police shield at which point she said, "Stop it!" In response, Det. Fesler allegedly struck her twice with the shield in her left jaw.

§ 87(2)(b) then saw PO Race jump over a dresser, and he struck her with an object she perceived as either a flashlight or a radio. She alleged during a phone conversation with Inv. Bakalar before her CCRB interview that both Det. Fesler and PO Race were hitting her with their radios and flashlights, but during her CCRB interview, only attributed this allegation to PO Race. She never made this allegation during her IAB interview.

§ 87(2)(g)

§ 87(2)(g)

Allegation G) Abuse of Authority: PO Donovan Race threatened § 87(2)(b) and § 87(2)(b) with the use of force.

§ 87(2)(b) stated that the officers, indicating both PO Race and Det. Fesler, told them not to move or they would be shot.

In § 87(2)(b)'s phone conversation with Inv. Bakalar, she stated that the officers (not specifying whether it was PO Race or Det. Fesler) asked, "Do you want to be fucking shot?"

During her CCRB interview, § 87(2)(b) stated that her daughter was crying after the initial contact with Det. Fesler and PO Race because PO Race had threatened to shoot them. § 87(2)(b) did not specify to whom he made this comment.

§ 87(2)(g)

§ 87(2)(g)

PO Race had no recollection of this search warrant and stated only that he would normally tell occupants, "Police, get down!" Det. Fesler stated only that the occupants were told to get to the floor.

When securing a location, ESU officers may have to use strong language to ensure quick compliance and their own safety as well as the safety of civilians. Police procedure 203-12, Deadly Physical Force, states that "police officers shall not use deadly physical force against another person unless they have probable cause to believe they must protect themselves or another person present from imminent death or serious physical injury. (Enc. 1)" § 87(2)(g)

§ 87(2)(g)

Allegation H) PO Joseph McCormack used physical force against § 87(2)(b)

§ 87(2)(b) stated that PO McCormack stepped on his back and neck while he was on the ground and handcuffed him. § 87(2)(g)

Allegation I) Force: Officers pointed their guns at the occupants of § 87(2)(b) in Queens.

ESU officers entering and securing a location on a valid no-knock search warrant will enter the location with their guns drawn, as is procedure, to ensure their own safety and the safety of civilians at the scene.

§ 87(2)(g)

Allegation J) Discourtesy: An officer spoke obscenely and rudely to § 87(2)(b)

§ 87(2)(b) stated that there were also four uniformed officers standing around downstairs, and one of them wanted to watch UPN Sports on television. When § 87(2)(b) stated she did not know what channel UPN was, this officer said, “Where the fuck do you come from, you don’t know UPN?” § 87(2)(b) only made this allegation during her CCRB interview—not during her IAB interview or her phone statement to Inv. Bakalar. § 87(2)(b) had returned to Jamaica by the time this investigation got started, so could not be reached for a statement.

ESU provided the pre and post search warrant execution plans, but these documents had no notation of any other uniformed officers present. Nothing on the roll call from the 113th Precinct noted which officers had been present at this search warrant execution.

A pre and post search warrant execution plan was ordered in the hopes of identifying a possible subject officer, as the officers interviewed for this case could not recall which specific uniformed officers were present. The 113th Precinct supplied only the post-execution plan which had no names of any uniformed officers. Several attempts to find out what had happened to the pre-execution plan were without success.

§ 87(2)(g)

Allegation K) Abuse of Authority: An officer strip searched § 87(2)(b)

§ 87(2)(b) stated briefly in her phone conversation that § 87(2)(b) s friend, § 87(2)(b) who had arrived at the scene after the initial entry, was handcuffed and forced to take his pants down. She did not specify if she had witnessed this or which officer had been involved. She did not make this allegation during her IAB interview or at her later CCRB interview.

During his CCRB interview—not at his IAB interview—§ 87(2)(b) stated that a male friend of § 87(2)(b) had his pants down around his ankles. He did not know how this occurred and did not know of any officers involved. § 87(2)(b) stated that she had seen § 87(2)(b) with his pants down, but did not know and did not see how they had gotten there. § 87(2)(g)

Efforts were made by phone, mail, and a field trip to contact § 87(2)(b) with no success. § 87(2)(g)

Allegation L) Discourtesy: An officer spoke obscenely and rudely to § 87(2)(b)

Allegation M) Abuse of Authority: An officer arrested § 87(2)(b)

§ 87(2)(b) made these allegations on behalf of herself, claiming that an officer had arrested her for asking too many questions and that he had repeatedly insulted her. § 87(2)(g)

§ 87(2)(b) gave her statement over the phone and was later asked to view photos of several potential subject officers. She scheduled an appointment, for which she failed to appear. She did not respond to repeated further efforts to contact her by mail and by phone. § 87(2)(g)

Allegation N) Discourtesy: An officer spoke obscenely and rudely to the residents of § 87(2)(b)

Allegation O) Abuse of Authority: An officer threatened § 87(2)(b) with the use of force.

§ 87(2)(b) made these allegations on behalf the other civilians present. None of these other civilians had made any similar allegations. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: